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Rules on route notices altered

Changes designed to protect taxpayers in development deals

Kerry Fehr-Snyder

The Arizona Republic

Dec. 21, 2006 12:00 AM

Developers will have to acknowledge in writing that they're in the path of the proposed South Mountain Freeway or another transportation corridor under new rules designed to reduce the need for state taxpayers to buy out developments later.

The new rules, which are expected to go into effect next week, were proposed in the wake of a controversy over a \$4 million truck stop that may have to be relocated at taxpayer expense. The policy would require quadruplicate copies of the notification letters, one of which would be sent to property owners who are developing their land.

"We want them to sign the acknowledgment because in some cases, if someone is developing in the right of way, they might be reluctant to proceed," Phoenix Deputy City Manager David Cavazos said.

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The change in policy comes because a developer, Speedco Inc., said it was surprised to learn of the freeway plans despite spending more than \$36,000 on city permits to build the truck stop on the western edge of the proposed Loop 202.

Speedco, based in Indiana, is proceeding with the development near 56th Avenue and Latham after initially expressing outrage.

In addition to creating a new paper trail, Phoenix staffers will undergo training to understand the new procedure in hopes of preventing mistakes, Cavazos said.

The beefed-up paperwork policy strengthens an existing process in which the city's Development Services Department is supposed to generate a "red border" letter notifying a developer that its property falls within the right of way of a planned transportation corridor.

The new policy is designed to ensure that a letter is sent, a copy is kept in the city's file and other copies are forwarded to the city's Streets Transportation Department and the Arizona Department of Transportation. But even with notification, city and state governments can't prevent developers from building on their land because private-



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property rights trump such government actions.

"We can't stop people from getting the permits, and at the end of the day, if someone wants to develop their property, that's their prerogative," Cavazos said.

Phoenix officials issued Speedco a building permit Oct. 6, and work at the site is under way.

Jim Dudley, Speedco's vice president of planning and development, has said the company expects to be paid for its land, any improvements it makes to the property and any costs associated with relocating the truck stop, if needed.

That means that state taxpayers may be on the hook to buy out the developer and pay for the truck stop's relocation.

A final decision on whether to build the freeway, fund it and pick its route is pending.

ADOT has long favored the 55th Avenue alignment, as has the Phoenix City Council.

But none of that information trickled down to Speedco, which learned about the proposed freeway in the media.

Phoenix officials initially said it was the developer's responsibility, not the city's, to determine whether a project is in the path of a proposed freeway.

Phoenix policymakers now say they wish they had told Speedco of the freeway.

The apparent omission brought a strong rebuke from ADOT, which relies on cities to tell developers about freeway projects when they come to the city for building permits.

"We've had too many cases (in Phoenix) where now we're left with a situation of not having to buy land but a business or a home," ADOT

spokesman Matt Burdick said.

Thomas Flynn, owner of Condemnation Analysts in Mesa, said he is not surprised by the city's lax notification and Speedco's ignorance about the freeway.

"I do due-diligence studies specifically for condemnation all over the country, and it is not the least bit unusual to find situations where the property owner is in the dark about future projects," he wrote in an e-mail.

Speedco should have discovered the freeway plans while acquiring the property, he said.

"While it is not unusual for cities to cooperate with ADOT, some of the blame needs to go to the property owner," he said.

"Part of the problem is that ADOT's right of way is never final until they go to bid. And if you rely on them, it's your fault, not theirs."

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Bunk, it is up to the various government agencies to buy the land now, or at the future price in the when they decide to do something. The owner of the property has right to do want it wants as long as the zoning permits. IF the government wants to restrict use now, they need to pay for the land at a fair value when they send the letter. As an Appraiser, I like what they are doing. Sorry AZ Governments, but the private land owners are not your straw assemblers. Pay when you start to reserve the land. See the 5th Amendment to the US Constitution. They were over 20 years planning the 202 and nothing was done. Is each property owner supposed to hold the land vacant, pay the taxes, and other fees for the future public use. I don't think so. If they want the land, buy now or pay higher later. That is the same as any person who wants real estate.(Den2919, December 21, 2006 06:48AM)

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